

**Request for Proposal**  
**Issued by University of Medicine and Dentistry of New Jersey**  
**for**  
**Management Services for**  
**University Hospital**

**1. New Jersey Medical and Health Sciences Restructuring Act**

- 1.1. The New Jersey Medical and Health Sciences Restructuring Act, P.L. 2012, c.45 (the “Restructuring Act” or “the Act”) was approved by the New Jersey Legislature in June 2012 and signed by the Governor on August 22, 2012. It was enacted to enrich and enhance the higher education opportunities for the residents of the State, creating vibrant educational institutions and communities that will attract business to the State and allow the State to retain its residents, both as students and as a productive and competitive workforce. It requires the restructuring of the University of Medicine and Dentistry of New Jersey (“UMDNJ”) by transferring most of UMDNJ’s health profession schools and other programs to Rutgers, The State University (“Rutgers”), and one medical school to Rowan University (“Rowan”), which will be newly designated as a public research university effective July 1, 2013. Additionally, University Hospital (“UH” or “University Hospital”), which operates currently as a constituent unit of UMDNJ, is established by the Act as an entity separate from Rutgers and from Rowan, operating as its own instrumentality of the State – a “body corporate and politic.” In that capacity, UH is required by law to be maintained as an acute care facility and trauma center.
- 1.2. The Restructuring Act authorizes UH to enter into a management agreement through a competitive contracting method for a contract to operate and manage, or to assist in the operation and management of, UH. The Act requires that any management agreement entered into be with a nonprofit corporation operating one or more hospitals in New Jersey and satisfy and maintain all of the conditions set forth in the Restructuring Act, including but not limited to, ensuring that the status of UH bargaining unit employees as public employees within the meaning of subsection d. of section 3 of the New Jersey Employer-Employee Relations Act, P.L. 1941, c. 100, is maintained.

**2. Purpose and Intent of This Request for Proposal**

- 2.1. Following the passage of and in accordance with the Act, UMDNJ has determined to explore the possibility of engaging a private manager (the “Manager”) who will assist in the operation and management of UH.
- 2.2. This Request for Proposal (“RFP”) is issued by UMDNJ. The purpose of this RFP is to solicit proposals from qualified and interested applicants (the “Applicant(s)”) to enter into an agreement (the “Management Agreement”) with UH to assist in the management of and advise UH regarding the continued operation of UH as a high-quality medical center, Level 1 Trauma Center, an important provider of health care services to the Greater Newark Area, and the principal teaching hospital of the Newark based schools of Rutgers Biomedical and Health Sciences, as further outlined in Section 6 below (hereinafter collectively referred to as the “Services”).

- 2.3. The Evaluation Committee (as hereinafter defined) shall present to the UMDNJ Board of Trustees (the “UMDNJ Board”) a recommendation for the award of a Management Agreement at a fair and reasonable price to the Applicant whose proposal conforms to this RFP and which is most advantageous to UH and the State (price and other factors included) as set forth in the Selection Criteria below. If the UMDNJ Board determines to approve a Management Agreement (subject to Section 9.10 below), the Management Agreement developed as part of this process would be approved by the UMDNJ Board on or about the Notice of Intent to Award date (currently May 1, 2013). Thereafter, if the University Hospital Community Oversight Board shall have reviewed same and the Department of Health (the “Department of Health”) shall have reviewed and approved same, and so long as any changes to the Management Agreement proposed by the Department of Health (if any) have been accepted, the UMDNJ Board or the newly constituted UH Board of Directors (the “UH Board”) may authorize the execution of the Management Agreement (subject to Section 9.10 below) on or about July 1, 2013.

### **3. Background about University Hospital**

#### **3.1. University Hospital’s Mission**

University Hospital, in its various incarnations, has been a presence in the City of Newark for more than a century. The evolution of UH from its humble roots of a 25-bed City Hospital in the 1880’s to its modern hospital facility providing trauma, emergency, and primary, secondary, tertiary and quaternary health care services has continued to keep pace with the city it serves. University Hospital brings medical care to the uninsured and underinsured and brings training and information to the community on a wide range of topics.

The programs and services of UH are reflected in its mission statement, “To improve the quality of life for all those we touch through excellence in patient care, education, research, and community service.” UH offers a wide range of tertiary and quaternary specialty services including northern New Jersey’s only Level 1 Trauma Center (incorporating a trauma-intensive care unit and the NorthSTAR helicopter emergency and critical care transport system), a regional center for neonatal intensive care, the Acute Stroke Center, the New Jersey Cardiovascular Institute, the Cochlear Implant Program, a neurosurgical intensive care unit and a special Brain Tumor Program, the Neurological Institute of New Jersey, a federally designated spinal cord injury program, The University Center for Bloodless Surgery and Medicine, and New Jersey’s first Liver Transplant Program.

University Hospital serves as the principal teaching hospital of the New Jersey Medical School and the New Jersey Dental School and the training site for the School of Nursing and the School of Health Related Professions. As an employer, the Hospital provides an array of occupational/professional training and employment opportunities to the residents of Newark. Under the Restructuring Act it will continue to be a principal teaching venue for all of the Newark-based schools within Rutgers Biomedical and Health Sciences. It will continue to champion quality patient care, community involvement, and teaching excellence.

### **3.2. UH Programs and Departments**

UH is a 519-bed acute care hospital and Level 1 Trauma Center which serves as the primary teaching hospital and clinical research site for Newark-based schools of UMDNJ, which will become part of Rutgers as of July 1, 2013. Currently, UH has a total of 2,735 full-time employees and a total active medical staff of 789; its annual operating budget is approximately \$600 million.

University Hospital offers a wide range of specialty services including northern New Jersey's only Level 1 Trauma Center (incorporating a trauma-intensive care unit and the NorthSTAR helicopter emergency and critical care transport system), a regional center for neonatal intensive care, the Acute Stroke Center, the New Jersey Cardiovascular Institute (NJCI), the Cochlear Implant Program, a neurosurgical intensive care unit and a special Brain Tumor Program, the Neurological Institute of New Jersey (a federally designated spinal cord injury program), New Jersey's first Liver Transplant Program, and numerous other cutting edge medical services. It has embraced the concept of the "Golden Hour," the time period in which the lives of a majority of critically injured trauma patients can be saved if definitive surgical intervention is provided.

Hospital departments include: Anesthesiology, Dental Medicine, Emergency Medicine, Family Medicine, Medical Genetics, Medicine, Neurological Surgery, Neuroscience, Ob-Gyn – Women's Health, Ophthalmology, Orthopedics, Pathology and Laboratory Medicine, Pediatrics, Physical Medicine and Rehabilitation, Podiatry Service, Psychiatry, Radiology, and Surgery.

### **3.3. UH Physical Plant**

The core physical plant structure of UH upon its separation from UMDNJ consists of several buildings and facilities. UH was constructed in the 1970's and the original configuration was completed in 1979. The building is of poured-in-place concrete construction. Two of the building's ten levels are below grade, the building entrance and most public spaces are on grade at C-Level, and above C-Level the building rises in pinwheel fashion. The 772,804 gross square foot edifice including additions was one of the last phases of development of the original UMDNJ Newark campus's initial "mega-structure," which was comprised of the Medical Science Building, Dental School, Smith Library and UH. UH, like other components of the interconnected two million square foot mega-structure, contains no independent cooling or heating plant equipment, but instead relies on power, chilled water, and hot water provided by the campus's power and cogeneration plant.

The Ambulatory Care Center ("ACC"), completed in 2005 as part of UMDNJ's 2001-2007 Capital Plan, is a six story steel-framed structure that houses outpatient practices, faculty offices, and the New Jersey Poison Information and Education System in its 196,661 gross square feet. There is a bridge connecting the ACC with University Hospital. The ACC has its own boilers and chillers, and is connected to the campus power and cogeneration plant for electrical power.

The EMS Headquarters, located to the west of the Bergen Building and a few blocks northwest of University Hospital and the ACC, is a 5,121 square foot one-story metal panel building dating from the late 1960's. Housing the main operations of University Hospital's Emergency Medical Services, the structure and its surrounding fenced in lot supports basic life support, advanced life support, rescue, and special operations services. Given the facility's age and location, there are no connections to campus plant infrastructure.

The Littleton Garage is a collection of three independent but proximate service buildings totaling 4,004 square feet. Two of the buildings are one-time auto service centers and the third is a prefabricated metal structure. Currently, the complex provides a home for vehicle maintenance functions of UMDNJ's Newark campus. Located off campus on Littleton Avenue, there are no connections to campus plant infrastructure.

Parking Deck P2, at the corner of Bergen Street and South Orange Avenue, houses 825 parking spaces in its 297,459 square feet. The eight story pre-cast concrete structure provides approximately 15,000 of shelled space facing Bergen Street, allowing for future development of retail, office, or other use. Completed in 2006, the deck provides for faculty, staff, student, visitor, and patient parking at the south east corner of the Newark campus. The structure was planned to accommodate parking demands associated with the nearby NJMS/UH Cancer Center, ACC, and UH. There are no heating or cooling needs associated with the open-air deck, and the structure is connected to the campus power and cogeneration plant for electrical power.

#### **4. Requirements and Qualifications for Applicant and Management Agreement**

- 4.1. Restructuring Act Requirements. The Act establishes certain minimum requirements that the Applicant and the Management Agreement must satisfy and maintain. Among other things, the Act requires that:
  - 4.1.1. An Applicant must be a non-profit corporation currently operating one or more New Jersey hospitals.
  - 4.1.2. All employees of UH shall remain "public employees" within the meaning of Section 18 of the Act and Section 3(d) of the New Jersey Employer Employee Relations Act and shall retain their rights and benefits under applicable collective negotiations agreements and applicable laws, including the Restructuring Act.
  - 4.1.3. The costs of the Management Agreement shall be fair and reasonable.
  - 4.1.4. The Management Agreement shall not disturb the governmental status or tax-qualification of the State pension and health benefit plans.
  - 4.1.5. The Management Agreement shall not disturb the tax-exempt status of any outstanding bonds which were issued to finance UH or any future tax-exempt bonds issued on behalf of UH.

- 4.1.6. UH shall remain a body corporate and politic, which shall be treated and accounted for as a separate nonprofit legal entity from Rutgers.
- 4.1.7. The exercise by UH of the powers conferred by the Restructuring Act is deemed to be public and essential governmental functions, and UH shall remain an instrumentality of the State.

**NOTE:** The above is not a complete summary of the entire Restructuring Act provisions regarding UH or a complete list of requirements established therein. Applicants are responsible for understanding the requirements and the conditions set forth in the Restructuring Act for a Manager of UH.

#### **4.2. Additional Applicant Qualifications**

An Applicant must demonstrate the ability to successfully assist in the operation and management of a health care institution like UH by: (i) applicable industry standards in areas such as: Licensing, Credentials, and Privileging; Leadership Experience; Financial Oversight; and Continuing Quality Improvement; and (ii) demonstrating management experience in complying with all applicable laws, rules, and regulations relating to health care institutions, including The Joint Commission and Title 8 of the New Jersey Administrative Code.

### **5. AUTHORITY OF UH BOARD**

- 5.1. Nothing in the Management Agreement shall be in derogation of the rights, responsibilities, privileges, and powers of the UH Board, all of which shall remain in full force and effect.
- 5.2. As the governing body of UH, the UH Board shall have ultimate supervisory authority over the Manager.
- 5.3. The Manager shall attend all public meetings held by the UH Board and shall, upon request, present a Management Report at any UH Board Meeting.

### **6. Scope of Work: Management Services to be Provided**

The Manager shall perform all of the duties necessary to advise UH as to the supervision, direction and control of the day-to-day operations of UH. UH shall directly contract for services necessary for the day-to-day operations of UH, and the Manager shall assist UH to operate as a financially viable and sustainable comprehensive healthcare institution providing services to the greater Newark community, including acute care, outpatient care, emergency services and other essential services. In addition, the Manager shall assist UH in fulfilling its role as the principal teaching hospital of the Newark-based schools of Rutgers Biomedical and Health Sciences. Without limiting the generality of the foregoing, the Manager shall:

#### **6.1. Strategic and Tactical Plan**

In collaboration with UH, the Manager shall assist UH in developing a strategic and tactical short, intermediate and long-term business plan for UH consistent with the Restructuring Act, UH's mission, and the goal of creating a high quality, efficient, comprehensive and coordinated urban health care delivery system in the Greater Newark Area that minimizes losses and improves financial performance (the "Plan"). A proposed Plan, addressing the following objectives, shall be submitted with the

Applicant's Proposal, and will be considered in the evaluation of the Applicant's Proposal:

- 6.1.1. UH remains financially viable and sustainable.
- 6.1.2. UH remains a high-quality medical center, Level 1 Trauma Center, and an important provider of acute, tertiary, and quaternary health care services to the Greater Newark Area.
- 6.1.3. UH remains the principal teaching hospital of the Newark-based schools of Rutgers Biomedical and Health Sciences.
- 6.1.4. UH effectively responds to health care reform initiatives.
- 6.1.5. UH responds to federal and State initiatives, including supporting its ability to participate in population-based management and/or payment programs such as the Medicare Shared Savings Program ("MSSP"), Medicaid Accountable Care Organizations initiatives, and other applicable demonstration and grant programs.
- 6.1.6. UH has a more efficient, coordinated, high quality and comprehensive health care delivery system in the Greater Newark Area with an appropriate balance of acute care and primary care services resulting in improved access to health care by the population residing in the Greater Newark Area.
- 6.1.7. Reducing the costs of operating UH, some of which will be borne by the State.
- 6.2. **The Manager shall assist in implementing the Plan.**

The Manager shall assist UH in the execution of the Plan.
- 6.3. **The Manager shall provide consultation about administrative personnel necessary to implement the Plan.**

The Manager shall assist UH in its efforts to maintain, recruit, and install on-site at UH certain full-time employees to ensure the successful administration and management of UH, including personnel responsible for the financial, clinical, legal, and human resource management of UH, consistent with all relevant provisions of applicable law, including the Act, including the requirement that all current UH employees retain their status as public employees.
- 6.4. **The Manager shall advise UH about UH employees.**
  - 6.4.1. All employees of UH shall remain "public employees" within the meaning of Section 18 of the Restructuring Act and Section 3(d) of the New Jersey Employer Employee Relations Act and shall retain their rights and benefits under applicable collective negotiations agreements and applicable laws, including the Restructuring Act. For example, and not by limitation, the Manager shall assist UH with regards to its compliance with the New Jersey Employer Employee Relations Act and all other applicable laws and collective negotiations agreements.
  - 6.4.2. Pursuant to the Restructuring Act, the UH Board has the power and duty to hire, fire, and fix salaries for all employees of University Hospital.

- 6.4.3. The Manager will advise UH about all UH Employees, consistent with all applicable laws, rules, and regulations relating to the management of public employees, including, but not limited to, those required by the Restructuring Act and the Employer Employee Relations Act.
- 6.4.4. The State of New Jersey shall retain all of the financial obligations with respect to the current and long-term benefits due to such employees under applicable collective negotiations agreements and the Restructuring Act, subject to appropriation by the Legislature. As required by the Restructuring Act, employees of the Manager shall not perform the duties of UH's public employees represented by majority representatives prior to the effective date of the Management Agreement, except to the extent such duties are incidental to their management duties.
- 6.4.5. The Manager shall assist UH to ensure that officers or employees of UMDNJ who become employees of UH retain all of their rights and benefits under existing collective negotiations agreements or contracts until such time as new or revised agreements or contracts are agreed to.
- 6.4.6. The Manager shall assist UH in its efforts to supervise and train all staff at UH, consistent with all applicable laws, rules, and regulations relating to the management of public employees including, but not limited to, those required by the Restructuring Act and the Employer Employee Relations Act.
- 6.4.7. The Manager shall consult with UH in all actions by UH relating to the promotion, assignment, and, where appropriate, disciplining and discharging decisions by UH about UH staff, consistent with all applicable laws, rules, and regulations relating to the management of public employees including, but not limited to, those required by the Restructuring Act and the Employer Employee Relations Act.
- 6.4.8. The Manager shall assist UH in establishing personnel policies and procedures, including salary scales and employee benefit programs, consistent with applicable law and any relevant collective bargaining agreements.
- 6.4.9. The Manager shall assist UH with all future collective negotiations, consistent with the requirements of the Act and the Employer Employee Relations Act.

**6.5. Support Services.**

The Manager shall advise UH about the on-site management personnel described above in their fulfillment of certain centralized support services ("Support Services").

- 6.5.1. Support Services should include services such as Legal Affairs, Corporate Compliance, Internal Audit, Collaborative Patient Quality, Safety and Satisfaction Programs, Physician Integration, Planning, Managed Care Contracting and Payor Relations, Human Resources, and Finance and Accounting Functions, including accounting and financial reporting; budgeting, revenue cycle management and cost accounting; treasury and investment management; purchasing and materials management (including group purchasing organizations ("GPOs") services); payroll and accounts payable; and centralized billing, accounts receivable management and

collection services, and any other support services required to execute the Plan.

- 6.5.2. The Support Services should be provided under the direction of UH and must be tailored, as necessary, to meet the unique circumstances of UH.

**6.6. Collaboration with Rutgers**

The Manager shall work with UH in all cooperative and collaborative arrangements with Rutgers in the provision of UH's comprehensive healthcare program and services to the greater Newark community, including outreach and mobile health services.

**6.7. Affiliation Agreements**

- 6.7.1. The Manager shall work with UH in regards to the negotiation and oversight of affiliation agreements with the Newark-based schools within Rutgers Biomedical and Health Sciences to ensure that UH remains the principal teaching hospital for Rutgers Biomedical and Health Sciences and to ensure that an effective network of teaching facilities is available in the Greater Newark Area (the "Medical Education Affiliation Agreement"). The UH Board shall approve (and if approved, execute) the Medical Education Affiliation Agreement and any other similar agreements required to effectuate such affiliations.

- 6.7.2. The Manager shall assist UH in coordinating with Essex County and other State or regional providers. The Manager shall work with UH to negotiate and oversee affiliation agreements with Essex County and other State, regional, and private providers as necessary to coordinate with other health care providers in Essex County, and the State. The UH Board shall approve (and if approved, execute) all such Affiliation Agreements.

- 6.7.3. The Manager shall assist UH in all coordination with Rutgers on all other agreements that shall or may exist between UH and Rutgers concerning the delivery of services to UH by Rutgers including, by way of example and not limitation, utilities, parking, information technology services, and human resources administration ("Services Agreements").

**6.8. Contracting**

- 6.8.1. The Manager shall advise UH about UH efforts to negotiate contracts with physicians and/or physician groups, non-physician groups, professionals for needed professional services (accounting, legal, consulting and other) services. The UH Board shall be responsible for the approval, denial or modification of all such contracts.

- 6.8.2. Subject to the supervision of the UH Board and materiality standards which shall be agreed upon in the Management Agreement, the Manager shall assist UH in the negotiation and execution of contracts for the purchase of all goods, equipment, and services needed for the operation of UH.



**6.9. Budgeting**

The Manager shall provide assistance to UH in its preparation and revision of all UH budgets and timely submission of same to the UH Board for approval.

**6.10. Compliance with State and Federal Law**

The Manager shall provide assistance to UH to ensure that all medical, support, and management services are performed in a manner consistent with State and federal law.

**6.11. Compliance with Licensing, Certification, and Accreditation Standards**

The Manager shall provide assistance to UH to ensure that all medical, support, and management services are performed in a manner consistent with all licensing, certification, and accreditation standards.

**6.12. Compliance with all Accords, Consent Orders, Court Orders, Administrative Orders.**

The Manager shall advise UH to ensure that UH is operated and all medical, support and management services are performed in a manner consistent with all applicable Accords, Consent Orders, Court Orders, and Administrative Orders, including that certain Corporate Integrity Agreement made by and between UMDNJ and the Office of Inspector General of the United States Department of Health and Human Services, dated September 30, 2009 (the “Corporate Integrity Agreement”).

**6.13. Administrative Operating Procedures and Controls**

The Manager will assist UH in efforts to develop, maintain, revise, deploy and supervise sound operating procedures, systems, and controls for UH with the objective of ensuring UH’s compliance with all applicable laws, regulations, licensing, certification and accreditation standards, as well as maximizing UH’s financial viability and sustainability. All new or revised operating procedures, systems, and controls shall be approved by the UH Board prior to implementation.

**6.14. Medical and Health Services Operating Procedures and Controls**

The Manager shall work with UH in efforts to develop, maintain, revise, deploy and supervise sound operating procedures, systems and controls for UH with the objective of ensuring sound medical care, UH’s compliance with all applicable laws, regulations, licensing, certification and accreditation standards, as well as maximizing UH’s financial viability and sustainability. All new or revised operating procedures, systems and controls shall be approved by the UH Board prior to implementation.

**6.15. Accounts Receivable and Billing**

The Manager shall assist UH in its efforts to make appropriate efforts to collect all accounts receivable and bill for all services ensuring UH’s compliance with all applicable laws, regulations, licensing, certification and accreditation standards, as well as maximizing UH’s financial viability and sustainability.

**6.16. Third Party Payor Agreements**

The Manager shall assist UH in all negotiations of contracts with third party payors.

**6.17. Insurance, Medicare, Medicaid applications**

Manager shall assist UH in the preparation and filing of insurance, Medicaid, Medicare applications and claims for services and assist UH in the handling of all appeals thereof on behalf of UH in a manner that ensures UH's compliance with all applicable laws, regulations, licensing, certification and accreditation standards, as well as maximizes UH's financial viability and sustainability.

**6.18. Prior Compliance Issues**

In the event of legal, regulatory, license, certification, compliance, billing or accreditation issues that may have arisen prior to the effective date of the Management Agreement, the Manager shall assist UH in the resolution of all such "pre-existing issues" to ensure that UH remains in compliance with all applicable laws, regulations, licensing, certification and accreditation standards at all times from and after the effective date of the Management Agreement.

**6.19. University Hospital Community Oversight Board**

The Act establishes the University Hospital Community Oversight Board with the purpose of ensuring that the mission of UH and the intent of the "Agreements Reached Between Community and Government Negotiators Regarding New Jersey College of Medicine and Dentistry and Related Matters of April 30, 1968" to provide a comprehensive health program to the community in the City of Newark, including, but not limited to, ensuring access to all essential health care services provided by the hospital, are upheld. The Manager shall provide assistance to UH with regards to the provision of staff support to the University Hospital Community Oversight Board as may be required.

**6.20. Broadway House for Continuing Care**

Broadway House for Continuing Care is a healthcare facility in Newark, New Jersey, which provides for the care of persons with AIDS ("Broadway House"). It was established in 1992 by a consortium of five Newark hospitals and currently operates as a non-profit corporation. It is currently anticipated that UH shall assume a leadership role by succeeding to UMDNJ's leadership role of Broadway House on or about July 1, 2013. If this occurs, the Manager will need to assist UH in fulfilling its role with Broadway House.

**6.21. Emergency Medical Services**

The Manager shall assist UH in the delivery of all of the UH Emergency Medical Services.

**6.22. Parking Services**

The Manager shall assist UH in maintaining Parking Deck P2 and the delivery of other parking services.

**6.23. Management and Operational Continuity**

The Manager shall work closely with UH to ensure that, for a period of five years after the effective date of the Restructuring Act, with review by the University Hospital Community Oversight Board and approval by the Department of Health,

there will be no substantive changes in the operation of UH that result in the diminution, deterioration, or reduction to essential health care services currently provided by UH.

**6.24. Accounting and Financial Reporting**

The Manager shall assist UH in the preparation of accounting and financial reports in accordance with industry standards and applicable law and timely submit them to the UH Board, Department of Health, and any other entity required by law, and post them on the hospital website, as applicable.

**6.25. Books and Records**

The Manager shall provide assistance to UH in the maintenance of all books and records in accordance with industry standards and custom, and in compliance with all applicable law. Books and records shall be available for UH Board review and to all federal, State, and county regulatory agencies.

**6.26. Maintenance, Repair, Capital Improvement**

The Manager shall make recommendations to the UH Board for all maintenance and repair of UH's physical assets and shall prepare, as part of the Plan and Budget, any recommended capital improvements or capital maintenance projects. The Manager shall prioritize any capital improvement or capital maintenance project prior to submission to the UH Board, and shall indicate to the UH Board what, if any, proposed project(s) is/are necessary to maintain accreditation, licensure, or otherwise meet appropriate standards.

**6.27. Marketing Plan**

The Manager shall assist in the development of a comprehensive marketing plan (the "Marketing Plan"), and upon approval by the UH Board, shall assist in its implementation.

**6.28. Quality Assurance Plan**

The Manager shall work with UH in maintaining and continuously improving the current comprehensive quality assurance plan ("QA Plan") for UH. At a future date, the Manager may suggest revisions or replacements to the current QA Plan, or the development of a new QA Plan, which shall be consistent with all applicable law, regulations, licensing, certification and accreditation standards and shall be approved by the UH Board prior to implementation.

**6.29. Life Safety Plan and Procedures**

The Manager shall advise UH about the maintenance of the current comprehensive life safety plan for UH ("LS Plan"). At a future date, the Manager may suggest revisions or replacements to the current LS Plan, or the development of a new LS Plan, which shall be consistent with all applicable law, regulations, licensing, certification and accreditation standards and shall be approved by the UH Board prior to implementation.

**6.30. Patient Rights Policy**

The Manager shall advise UH about the maintenance of the current patient rights policy for UH (“Patients Rights Policy”). At a future date, the Manager may suggest revisions or replacements to the current Patients Rights Plan, or the development of a new Patients Rights Plan, which shall be consistent with all applicable law, regulations, licensing, certification and accreditation standards and shall be approved by the UH Board prior to implementation.

**6.31. Risk Management Plan**

The Manager shall work with UH in maintaining the current Risk Management Plan for UH (“Risk Management Plan”). At a future date, the Manager may suggest revisions or replacements to the current Risk Management Plan, or the development of a new Risk Management Plan, which shall be consistent with all applicable law, regulations, licensing, certification and accreditation standards and shall be approved by the UH Board prior to implementation.

**6.32. Legal Actions**

The Manager shall assist UH in order to facilitate the legal representation of UH employees, as well as facilitate the Attorney General’s legal representation of UH employees in medical malpractice claims.

**6.33. Compliance with Audits**

The Manager shall work with UH to timely comply with and facilitate all audits instituted by the UH Board or any other public or other entity with legal authority or UH Board approval to audit UH.

**6.34. Operating and Performance Standards for Manager**

The Manager shall meet operating and performance standards as required by the Management Agreement.

**6.35. Management Information Systems, Telecommunications and Energy Management Systems**

The Manager shall work with UH to ensure that UH has the management information systems, telecommunications systems and energy systems which are necessary to fulfill the mission, duties and obligations of UH, all subject to the terms and conditions of any Services Agreements.

**6.36. Security Administration**

The Manager shall assist UH in its efforts to fulfill its obligations to be responsible for ensuring that all patients, staff and visitors at UH are at all times in a safe, clean, and orderly environment and shall take any and all actions required to ensure such safety, all subject to the terms and conditions of any Services Agreements.

## **7. REQUIRED COMPONENTS OF THE PROPOSAL**

### **7.1. General Requirements.**

Each Applicant submitting a Proposal must follow the instructions contained in this RFP in preparing and submitting its Proposal. A Proposal must contain all of the information in the order and format indicated below. In addition, Applicants are directed to review the Terms and Conditions that are attached hereto as Appendix I. Applicants may also include any other information, background documents, or supporting materials which the Applicant would like to provide in its Proposal.

### **7.2. Eligible Applicants**

Applicants must meet the Requirements and Qualifications set forth in Section 4 above.

### **7.3. Contents of the Proposal**

An Applicant's Proposal must address each of the following requirements. The Proposal need not mirror the specific language of this RFP but must substantively address each requirement.

7.3.1. The Applicant's proposal must detail how Applicant meets the eligibility criteria in Section 4.

7.3.2. In lieu of a cover letter, please provide an executive summary identifying and substantiating the basis of your contention that the Applicant is the best qualified to provide the management services for UH.

7.3.3. Provide the name, title, business address, e-mail address, telephone number and fax number of the individual at the Applicant who may be contacted regarding the Proposal.

7.3.4. Provide a description of the Applicant and its organizational structure and the composition of its board. Describe the Applicant's number of employees and the participation of women and minorities.

7.3.5. Provide all of the following:

7.3.5.1. Explanation how the Applicant intends to provide such management services to UH as specified in Section 6.

7.3.5.2. Description of its experience, if any, with urban populations, community-based services, and populations consisting of a high government payor mix, including Medicaid.

7.3.5.3. Description of its experience, if any, in managing a system of academic and community hospitals and clinics, including facilities in Newark and Essex County or other urban/suburban environment.

7.3.5.4. Description of its experience, if any, managing relationships with multiple medical, dental, nursing and allied health professional schools, including Newark-based schools, such as, the New Jersey Medical School, the New Jersey Dental School, the UMDNJ

School of Nursing, the Rutgers College of Nursing, and the Essex County Technical Vocational School.

- 7.3.5.5. Description of its experience, if any, managing relationships with employed physicians, dental and medical school faculty and private attending physicians.
- 7.3.5.6. Description of its experience, if any, dealing with majority representatives of multiple bargaining units.
- 7.3.5.7. Description of its experience, if any, with, and demonstrated responsiveness to, federal and state initiatives, such as the MSSP and other federal and state grant and demonstration programs.
- 7.3.5.8. Description of its experience, if any, in managing large budgets of \$150 million or more per year and leveraging GPOs and other cost-effective techniques for materials management.
- 7.3.5.9. Description of its experience, if any, billing and collecting for the range of medical and professional services provided by an academic medical center and its affiliated clinics.
- 7.3.5.10. Description of its experience, if any, managing and coordinating with other providers in the Greater Newark Area or other urban/suburban environment.

**7.3.6. Preliminary Strategic and Tactical Plan**

The Proposal must contain the Plan set forth in Section 6.1.

**7.3.7. Personnel**

The Proposal must contain a detailed analysis of the Applicant's recommendations to be submitted to UH for a staffing plan which must delineate the organization and structure of UH and any Manager personnel in order to assist UH in efficiently implementing the Plan. This analysis must contain details as to lines of reporting authority, job descriptions and titles. It must also be accompanied by an organizational chart. The Applicant must also provide an outline of due diligence which is necessary for the Applicant to identify the executive talents and capabilities of UH personnel. In addition, the Applicant should also include whether the Applicant plans to recommend to UH whether any new partnerships, new entities, new corporations, operating contracts or other arrangements should be undertaken by UH.

**7.3.8. Proposed Term and Compensation Arrangement**

The Proposal must include a proposed term (consistent with Paragraph 1 of the Terms and Conditions that are attached hereto as Appendix I) and price structure regarding: (i) the costs for which the Manager will be responsible; (ii) the costs for which UH will be responsible; (iii) management and other fees; and (iv) incentive payments (if any). The Proposal must explain the reasoning for all such prices and why the price structure is consistent with UH's interests. The compensation plan should be fair and reasonable, and all

aspects of it shall be made public as part of the final Management Agreement with UH.

The Proposal must demonstrate that the engagement of the Manager shall not cause any tax-exempt bonds the proceeds of which have been, are being, or will be, used by UH to become taxable under the Internal Revenue Code.

The Proposal must demonstrate that the entering into the Management Agreement and the arrangements contemplated therein will not disturb the governmental and tax-qualified status of the State pension and health benefit plans which include past or present employees of UH.

**7.3.9. Proposed Management Agreement**

The Proposal must include a form of Management Agreement that addresses all of the elements of the Scope of Services set forth in Section 6 and includes the required Terms and Conditions set forth in Appendix I. The Management Agreement shall be negotiated by UMDNJ and the Applicant with the express goal of finalizing the form of Management Agreement on or about the Notice of Intent to Award date (currently May 1, 2013).

**7.3.10. Disclosure of Investigations and Other Actions Involving Applicant**

For the Applicant, key leadership identified in the Proposal, and Board members, a certification addressing the following must be included.

- 7.3.10.1. Have the Applicant, key leadership identified in the Proposal, and Board members listed in its Proposal or its attachments ever been arrested, indicted, or convicted in a criminal or disorderly persons matter by the State of New Jersey (or political subdivision thereof), any other state, or the U.S. Government?
- 7.3.10.2. Have the Applicant, key leadership identified in the Proposal, and Board members listed in its Proposal or its attachments ever been suspended, debarred or otherwise declared ineligible by any government agency from bidding or contracting to provide services, labor, materials or supplies?
- 7.3.10.3. Are there currently any pending criminal matters or debarment proceedings in which the Applicant, key leadership identified in the Proposal, and Board members listed in its Proposal or its attachments are involved?
- 7.3.10.4. Has the Applicant, key leadership identified in the Proposal, and Board members listed in its Proposal or its attachments been denied any license, permit or similar authorization required to engage in the work required to satisfy the scope of work as defined in Section 6, or has any such license, permit, or similar authorization been revoked by any agency of federal, state, or local government?

If the answer to any of the above questions is Yes, you must provide a detailed description of any investigation or litigation, including but not limited to

administrative complaints or other administrative proceedings, involving public sector clients during the past 5 years. This description must include and thoroughly describe the nature and status of the investigation, and for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and if applicable, disposition, including but not limited to any settlement agreements, pleas, or conditions attached to the disposition.

#### **7.3.11. Applicant Information and Disclosure**

For its three most recently completed fiscal years, the Applicant's proposal shall include copies of its filed Federal Forms 990, "Return of Organization Exempt from Income Tax," and its audited financial statements.

The Applicant's Proposal shall include copies of the documents which demonstrate that the Applicant has the full legal right and power to operate a hospital in the State of New Jersey and to assume responsibility to make management recommendations to UH.

The Applicant's Proposal can be released to the public during the protest period after contract award under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA") or the common law right to know as established under New Jersey case law. After Notice of Intent to Award the contract, all information submitted by bidders in response to a bid solicitation is considered public information, notwithstanding any disclaimers to the contrary submitted by a bidder, except as may be exempted from public disclosure by OPRA and the common law.

Any proprietary and/or confidential information in an Applicant's proposal will be redacted. The Applicant may designate specific information as not subject to disclosure pursuant to the exceptions to OPRA found at N.J.S.A. 47:1A-1.1, or in accordance with applicable law, when Applicant has a good faith legal and/or factual basis for such assertion. UMDNJ or UH reserves the right to make the determination as to what is proprietary or confidential, and will advise the Applicant accordingly. The location in the proposal of any such designation should be clearly stated in a cover letter. UMDNJ or UH will not honor any attempt by the Applicant to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal. In the event of any challenge to the Applicant's assertion of confidentiality with which UMDNJ or UH does not concur, the Applicant shall be solely responsible for defending its designation(s).

Notwithstanding the foregoing, filed Federal Forms 990, "Return of Organization Exempt from Income Tax," are publically available documents. Accordingly, UMDNJ or UH shall be free to disclose such Forms.

#### **7.3.12. Other Information**

The Applicant may include any additional information it believes is important for the consideration of its Proposal.



#### 7.4. **Submission**

The Proposal must be submitted by e-mail to: [kenyontw@umdnj.edu](mailto:kenyontw@umdnj.edu).

The body of the e-mail must include the following:

Respondent's Name  
Organization's Name  
Address  
RE: UH RFP for Management Services

### **8. Timeline, RFP Proposal and Approval Process**

#### 8.1. **Timeline**

The dates set forth below for the Notice of Intent to Award and the date of approval of the Management Agreement are estimated and may change in the sole discretion of UMDNJ as determined to be in the best interests of UMDNJ.

RFP issued: **March 8, 2013**

Q&A Submission Deadline: **March 20, 2013 at 5:00pm EDT**

Mandatory Bidders' Conference: **March 22, 2013 (time and place to be determined).**

Q&A Posted: **March 27, 2013**

Proposals Due: **April 11, 2013 at 3:00pm EDT**

Bid Opening Date: **April 11, 2013 at 4:00pm EDT**

Form of Management Agreement Approved by UMDNJ Board: **May 1, 2013**

Notice of Intent to Award: **May 1, 2013**

#### 8.2. **Pre-Proposal Process**

##### 8.2.1. **Due Diligence**

The Applicant shall be responsible to perform all due diligence it deems appropriate for the submission of a Proposal. The Applicant may not withdraw a proposal after the Proposal submission deadline on the basis of any information it had access to or could have had access to prior to the proposal submission deadline.

##### 8.2.2. **Electronic Data Room (or Equivalent)**

An Electronic Data Room or equivalent access to data will be established. UMDNJ will place all relevant UH operating policies, procedures, and reports in the Data Room or provide equivalent access to data for Applicant review upon request.

Contact Thomas Kenyon at (732) 235-9619 or [kenyontw@umdnj.edu](mailto:kenyontw@umdnj.edu) to register for access to the Data Room or for equivalent access to data.

All Applicants will be required to execute a non-disclosure agreement to be provided, before obtaining access to the Electronic Data Room or equivalent access to data.

8.2.3. **Limit on Communications with UMDNJ and State**

Communications with representatives of UMDNJ or UH concerning this RFP is NOT permitted during the term of the submission and evaluation process except as specified below. Communications regarding this RFP in any manner (except as set forth below) will result in the immediate rejection of Applicant's Proposal. If the Applicant has questions or requires clarification on any aspect of this RFP, including access to any information for pre-proposal due diligence, please forward the request via e-mail to in accordance with Section 8.2.4.

8.2.4. **Applicant Questions**

Questions will be accepted via email to [kenyontw@umdnj.edu](mailto:kenyontw@umdnj.edu) only until **March 20, 2013** at 5:00 p.m. EDT. Questions should be directly relevant to the RFP to which the Applicant is responding and the Applicant should so indicate in the question. Questions should be asked in consecutive order, from beginning to end, following the organization of the RFP to which the Applicant is responding. Each question should begin by referencing the RFP, the RFP page number and the section number to which it relates. UMDNJ will post answers on its website by **March 27, 2013**. A Mandatory Bidders' Conference will be held on **March 22, 2013**. Any Applicant who wishes to attend the Mandatory Bidders' Conference shall register via email to [kenyontw@umdnj.edu](mailto:kenyontw@umdnj.edu) by **March 20, 2013** at 5:00 p.m. EDT. Only two (2) representatives of said Applicant shall be permitted to attend the Mandatory Bidders' Conference.

8.2.5. **Applicant responsibility for cost of and effort to produce Proposal**

The Applicant assumes the sole responsibility for the complete effort required in this RFP. No special consideration shall be given after the Proposals are opened because of an Applicant's failure to be knowledgeable about all requirements of this RFP. By submitting a Proposal in response to this RFP, the Applicant represents that it has satisfied itself, from its own investigation, of all of the requirements of this RFP. The Applicant assumes the full cost of development of the Proposal.

8.2.6. **Withdrawing Proposals**

Applicants may withdraw their Proposals via email at any time prior to the proposal submission deadline, as indicated below, attaching written notification signed by an authorized agent of the Applicant. Proposals may thereafter be resubmitted, but only up to the final filing date and time.

8.2.7. **Proposal Submission Deadline**

Proposals must be received by **April 11, 2013 at 3:00pm EDT**. Proposals received after the time and date listed above will not be considered.

8.2.8. **Proposals Become Property of UMDNJ**

Documents and information submitted in response to this RFP shall become property of UMDNJ and generally shall be available to the

general public after the award of the Management Agreement, to the extent required by applicable law, including OPRA. This is the case notwithstanding any statement to the contrary made by an Applicant in its Proposal.

## **9. EVALUATION OF PROPOSALS**

### **9.1. Review for Responsiveness**

All Proposals will be reviewed to determine responsiveness. Non-responsive Proposals will be rejected without evaluation.

Should a proposal not meet all of the requirements of this RFP, UMDNJ reserves the right to continue to consider the proposal and negotiate a Management Agreement that is consistent with UH's best interests, as set forth in section 9.4.

### **9.2. Reserved Rights**

UMDNJ reserves the right to request additional information or clarification if necessary, or to reject any and all Proposals with or without cause, and waive any irregularities or informalities in the Proposals submitted. UMDNJ further reserves the right to make such investigations as it deems necessary as to the qualifications of any and all firms submitting Proposals. In the event that all Proposals are rejected, UMDNJ reserves the right to re-solicit Proposals. UMDNJ reserves the right, in its sole and absolute discretion, to negotiate with responding firms as determined by UMDNJ to be in the best interests of UH.

### **9.3. Scoring of Proposals.**

Proposals will be reviewed and scored by an Evaluation Committee pursuant to the selection criteria agreed upon by the Evaluation Committee before review of the Proposals. UMDNJ may choose to make use of the expertise of outside consultants.

### **9.4. Two Step Proposal Evaluation and Negotiation Process**

#### **9.4.1. Step One**

Each Proposal will be reviewed and the Evaluation Committee shall recommend to UMDNJ that it institute negotiations for a full Management Agreement with one or more Applicants. Upon UMDNJ receiving the recommendation, Step Two shall begin.

UMDNJ reserves the right to hold oral interviews with any or all of the firms submitting Proposals during Step One. Such oral interviews, if any, will in no way change the original Proposal. If oral interviews are to be held with any or all of the Applicants, UMDNJ will notify such firms in a reasonable amount of time prior to such oral interview. UMDNJ will not be responsible for any expenses in the preparation and/or presentation of the Proposals and oral interviews, if any, or for the disclosure of any information or material received in connection with this solicitation, whether by negligence or otherwise.

9.4.2. **Step Two**

In Step Two, the Applicants shall be authorized to conduct due diligence during which they can inspect the facilities and have questions addressed which arise during such due diligence period.

9.4.2.1. The Evaluation Committee shall negotiate a Management Agreement with the Applicant(s). If the Evaluation Committee recommends negotiating with more than one Applicant, the negotiations with each Applicant shall be done with each without revealing the content of a Proposal or the negotiations to the other Applicant(s).

9.4.2.2. At the point the Evaluation Committee is satisfied with the negotiated Management Agreement with each Applicant, it shall allow each applicant to submit a final proposal as to price and any other factors that is either consistent with the negotiated Management Agreement, or is made more favorable to UH in one or more ways, as its final offer.

9.4.2.3. The Evaluation Committee shall evaluate the final offers in light of the Selection Criteria and recommend award of a Management Agreement to UMDNJ.

9.5. UMDNJ shall review the Evaluation Committee's recommendation and select an Applicant to be the Manager based on the Selection Criteria. The review of the Initial and Final Proposals will be based upon the information provided to UMDNJ in response to this RFP and any necessary verification of such information provided thereof. The award shall be made by written notice to the Applicant whose Final Proposal, conforming to the RFP, is most advantageous to UMDNJ, UH and the State, price and other factors considered. The determination shall be made in the UMDNJ Board's sole and absolute discretion.

9.6. **Selection Criteria**

Selection Criteria will include, but not be limited, to:

9.6.1. Applicant's hospital management and operation expertise;

9.6.2. Applicant's adherence to the criteria and goals included in the Restructuring Act and this RFP;

9.6.3. Applicant's demonstration of a credible, actionable, innovative Plan;

9.6.4. The demonstrable interest on the part of the Applicant's governance board in undertaking the provision of management services to UH;

9.6.5. Quality of applicant's overall Proposal;

9.6.6. How the Proposal will further allow UH to continue its public mission and commitment to provide a comprehensive healthcare program and services to the greater Newark community, including acute, tertiary, and quaternary care, and emergency and other essential services provided by the hospital;

- 9.6.7. How the Proposal will permit UH to continue its mission as the principal teaching hospital of Rutgers Biomedical and Health Sciences and other Newark-based medical education programs;
  - 9.6.8. Whether the cost of the Management Agreement is fair and reasonable;
  - 9.6.9. Whether the Management Agreement provides for the full disclosure of all management and other fees;
  - 9.6.10. Whether the Management Agreement requires the Applicant's annual audited financial statements to be filed with the Department of Health and posted on the hospital website; and
  - 9.6.11. Whether the Management Agreement retains the status of UH employees as public employees within the meaning of subsection d. of section 3 of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-3).
- 9.7. Notice of Intent to Award**
- UMDNJ shall issue a Notice of its Intent to Award the Management Agreement to the selected Applicant. UMDNJ shall post the Notice of Intent to Award the Management Agreement on its website consistent with N.J.S.A. 18A:64G-6.1(e).
- 9.8. University Hospital Community Oversight Board Review**
- The University Hospital Community Oversight Board shall review the proposed Management Agreement in accordance with the Restructuring Act after the Notice of Intent to Award is posted (currently May 1, 2013).
- 9.9. Department of Health Review**
- The Act requires that the Department of Health review and approve the Management Agreement. In the event that the Department of Health requires any changes to the Management Agreement developed as a result of this RFP in order to approve it under the Restructuring Act, so long as UMDNJ / UH and the Manager agree with the changes, the Management Agreement may be so amended. The Department of Health's review shall include, but not be limited to:
- 9.9.1. Whether UH will continue its public mission and commitment to provide a comprehensive healthcare program and services to the greater Newark community, including acute care, and emergency and other essential services provided by UH;
  - 9.9.2. Whether the cost of the Management Agreement is fair and reasonable;
  - 9.9.3. Whether the Management Agreement provides for the full disclosure of all management and other fees;
  - 9.9.4. Whether the Management Agreement requires that UH's annual audited financial statements be filed with the Department of Health and posted on the UH website;
  - 9.9.5. Whether the Management Agreement retains status of UH employees as public employees within the meaning of subsection d. of section 3 of the

“New Jersey Employer-Employee Relations Act,” P.L.1941, c.100 (C.34:13A-3); and,

- 9.9.6. Whether the University Hospital Community Oversight Board has reviewed the terms of the Management Agreement.

**9.10. Board Approvals**

The UMDNJ Board may approve the engagement of the selected Manager and the form of Management Agreement on the Notice of Intent to Award date (currently May 1, 2013) if: (a) the Manager has satisfied all of the requirements in Section 9.6 above, and (b) a determination to the satisfaction of the UMDNJ Board and its legal counsel, in their sole discretion, that the engagement of the Manager and the prospective execution of the Management Agreement shall not disturb the tax-exempt status of bonds issued to finance UH or the governmental and tax-qualified status of the State pension and health benefit plans. Thereafter, the Management Agreement may be executed if: (a) the review required by the University Hospital Community Oversight Board under Section 9.8 above and the review and approval required by the Department of Health under Section 9.9 above have been received, (b) any changes to the Management Agreement proposed by the Department of Health (if any) have been accepted, and (c) determination to the satisfaction of the UMDNJ Board or the UH Board and its legal counsel, in their sole discretion, has been made that the execution of the Management Agreement shall not disturb the tax-exempt status of bonds issued to finance UH or the governmental and tax-qualified status of the State pension and health benefit plans.

## APPENDIX

Appendix I

TERMS AND CONDITIONS

**TERMS AND CONDITIONS  
FOR  
MANAGEMENT AGREEMENT  
FOR  
UNIVERSITY HOSPITAL**

Unless otherwise defined herein, capitalized terms shall have their meaning as set forth in the Request for Proposal Issued by the University of Medicine and Dentistry of New Jersey for Management Services for University Hospital dated March 8, 2013.

**1. Term**

Manager will begin performance of the Services upon the Effective Date (as defined herein) of the Management Agreement. The Management Agreement shall be for a term of between not less than two (2) years and not more than five (5) years from the Effective Date and shall expire and automatically terminate at the conclusion of such term; provided, however, the Management Agreement may be terminated on an earlier date in accordance with Paragraph 6.

**2. Independent Contractor and Warranties**

Manager shall remain an independent contractor for the term of the Management Agreement. Nothing contained in the Management Agreement or in the Terms and Conditions shall be construed to make the Manager an employee of UH or to create a joint venture between the Manager and UH. By entering into the Management Agreement, Manager warrants that it is capable of providing the Services contemplated herein, by training and licensing.

**3. Confidential Information, Generally**

During the term of the Management Agreement, the Manager will have access to, and will generate certain information (including scientific, technical, clinical, human resource, tax, and commercial information), which shall be confidential and/or proprietary to UH ("Confidential Information"). The Manager agrees:

- a. Not to use such Confidential Information except for the purposes of the Management Agreement; and
- b. Not to disclose Confidential Information to others without the express written permission of UH, except that Manager shall not be prevented from disclosing such Confidential Information that is required to be disclosed pursuant to a subpoena, law, regulation or other legal proceeding, provided that:
  - i. Manager first provides UH with reasonable advance written notice and the opportunity, if possible, to limit, object to, or narrow such disclosure; and



- ii. Manager assists UH in any effort to seek confidential treatment of such Information by protective order or otherwise, and
- iii. any disclosure hereunder is limited in scope and recipients to that which is required by such legal proceeding.

It is further agreed that the furnishing of Confidential Information to Manager shall not constitute any grant, option, or license to Manager under any patent or other rights now or hereinafter held by UH.

Manager's obligations under this section of the Terms and Conditions shall continue in effect indefinitely unless expressly released by UH.

#### **4. Confidentiality of Medical Records and Health Information**

Manager shall maintain the confidentiality of any medical records to which the Manager has access under the Management Agreement. This obligation of confidentiality shall apply during the term of the Management Agreement and shall survive the termination of the Management Agreement indefinitely.

In addition, the Manager agrees to sign, and be bound by, the terms of UH's Business Associate Agreement ("BAA"). The BAA sets forth boundaries and requirements to access protected health information that is considered protected pursuant to federal, state and/or local laws and regulations in accordance with the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009. The BAA is attached hereto and is incorporated by reference.

#### **5. UH Intellectual Property**

##### **a. Definitions:**

"Intellectual Property" means any: (a) formulae, algorithms, methodologies, processes, process improvements, procedures, designs, ideas, concepts, research, discoveries, work product, materials, inventions and invention disclosures (whether or not patentable or reduced to practice), know-how, and technology; (b) Software, databases, tools, and machine-readable texts and files; and (c) literary work or other work of authorship, including documentation, reports, drawings, charts, graphics and other written documentation, together with all patents, copyrights, trademarks, service marks, trade secrets, logos, trade dress, and applications for any of the foregoing, and other intellectual property rights in or appurtenant to any of the foregoing.

"UH Intellectual Property" means, collectively: (a) the Intellectual Property that is (i) owned, acquired or developed by UH prior to or after the effective date of the Management Agreement (the "Effective Date") or (ii) licensed or leased by

UH from a third party prior to or after the Effective Date.

“UH New Intellectual Property” means any modifications and enhancements to, and derivatives of, UH Intellectual Property, including all modifications and enhancements to, and derivatives of, Work Product.

“Work Product” means any Intellectual Property or work method, modifications or enhancements to Intellectual Property and Related Documentation or work method developed pursuant to the Management Agreement by or on behalf of Manager or any subcontractor or any combination of Manager or any subcontractor and UH.

b. Ownership.

As between the Parties, all worldwide right, title and interest in and to all UH Intellectual Property is, and shall be, owned by UH.

c. UH Intellectual Property.

Subject to obtaining any consents of third parties which may be required, UH hereby grants to Manager, solely to the extent necessary to perform under the Management Agreement, a royalty-free, non-exclusive, non-transferable limited license to use UH Intellectual Property during the term. Manager may sublicense, subject to any applicable third party consents, to affiliates and subcontractors of Manager the royalty-free right to access and use UH Intellectual Property during the term solely on an “as needed” basis, but only if such affiliates and subcontractors are subject to a written management agreement with Manager consistent with the applicable terms set forth in the Management Agreement protecting UH Intellectual Property, including all confidentiality, non-disclosure, and non-use obligations pertaining thereto.

d. UH New Intellectual Property and Work Product.

As between the parties, UH owns all worldwide right, title and interest in and to any and all Work Product and UH New Intellectual Property. The UH New Intellectual Property and Work Product shall be considered to be works made for hire (as that term is used in Section 91 of the United States Copyright Act, 17 U.S.C. § 101, or in analogous provisions of other applicable UH Policies and Rules) and the UH, and not Manager or any subcontractor, shall have full and complete ownership of all such UH New Intellectual Property and Work Product. If any such Work Product or UH New Intellectual Property may not, by operation of law, be considered a work made for hire in accordance with the Management Agreement, Manager hereby irrevocably assigns, and shall assign, to UH, without further consideration, all of Manager’s right, title and interest in and to such Work

Product or UH New Intellectual Property, including United States and foreign patent, copyright and other intellectual property rights. Manager shall execute all instruments which may be necessary to memorialize any such assignments. Manager acknowledges that UH and the successors and assigns of UH have the right to obtain and hold in their own name any patent, copyright and other intellectual property rights in and to such Work Product and UH New Intellectual Property. UH shall grant Manager license and other rights with respect to such Work Product and UH New Intellectual Property if necessary for the Manager's performance under the Management Agreement.

e. No Post-Termination Rights.

After the expiration of the term, Manager and any Manager affiliate or subcontractor shall have no right to use any UH Intellectual Property, and Manager shall promptly return to the UH all UH Intellectual Property and/or items embodying such UH Intellectual Property in Manager's possession or in the possession of any Manager affiliate or subcontractor or, upon UH's request, destroy any copies of such items remaining in Manager's or any Manager affiliate's or subcontractor's possession and certify such destruction to the satisfaction of UH.

**6. Termination of Management Agreement**

a. **For Cause**

UH may terminate the Management Agreement immediately, by giving written notice, if:

- i. the Manager advises UH in a manner that is contrary to the public interest;  
or
- ii. the Manager engages in conduct which is not in the best interests of UH;  
or
- iii. the Manager breaches any material term of the Management Agreement;  
or
- iv. the Manager fails to properly and timely perform the duties of Manager as set forth in the Management Agreement; or
- v. the Manager engages in willful misconduct or gross negligence, or acts of waste with respect to UH assets; or
- vi. the Manager engages in acts which confer improper personal benefit upon any employee of the Manager; or

- vii. the filing for bankruptcy or other creditor protection by the Manager or the filing of bankruptcy or creditor protection by creditors of the Manager; or
- viii. the Manager engages in criminal activity or is convicted of any felony; or
- ix. there is any change to the Manager's corporate entity or the Manager's status as a tax-exempt entity; or
- x. the Manager engages in any activity which could, or does, negatively affect the tax exempt status of any outstanding bonds, the proceeds of which have been, are being, or will be, used by UH in pursuit of its mission; or
- xi. the Manager engages in any activity which could, or does, negatively affect the tax exempt status of any qualified plan for retirement or health benefit plan whose participants include past or present employees of UH.

**b. For Convenience**

UH shall have the right to terminate the Management Agreement for convenience, upon 120 days' prior written notice. In the event of any termination pursuant to this paragraph, Manager agrees to forward to UH all work performed as of the date of termination. Manager shall be paid for work performed to the date of termination, and shall not be entitled to any payment for early termination of the Management Agreement.

**c. Reports**

In the event of a termination, the Manager shall furnish to UH, free of charge, such reports as may be required.

**7. Payment upon Termination**

In the event of any termination for any reason, Manager agrees to forward to UH all work performed as of the date of termination. Manager shall be paid for work performed to the date of termination, less any damages sustained by UH. Manager shall not be entitled to any damages for early termination of the Management Agreement.

**8. Non-Discrimination/Equal Opportunity**

Manager, or any subcontractor of Manager, as applicable, will not discriminate against any employee or application for employment because of race, color, religion, sex, national origin, creed, ancestry, age, disability, marital status, familial status, affectional or sexual orientation, atypical hereditary cellular or blood trait, liability for service in the Armed Forces of the United States and as set forth in the New Jersey

Law Against Discrimination, N.J.S.A. 10:5-1 et seq., the Civil Rights Act of 1964, Title VII, 42 U.S.C.A. §2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C.A. § 621 et seq., the Americans With Disabilities Act, 42 U.S.C.A. §12101 et seq., and all other laws guaranteeing equal employment.

Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to the characteristics listed above. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

## **9. Affirmative Action**

The Manager agrees and certifies that all contracts the Manager is assisting UH in negotiating shall include the following paragraphs required by the New Jersey Law Against Discrimination, P.L. 1975, c. 127, and which also pertain to the Manager and its subcontractors.

- a. During the performance of this Contract, the Manager agrees as follows:
  - i. The Manager or subcontractor, where applicable, will not discriminate against any employees or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Manager will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause.
  - ii. The Manager or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the Manager, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.
  - iii. The Manager or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective

bargaining management agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Manager's commitments under the New Jersey Law Against Discrimination, P.L. 1975, c. 127, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- iv. The Manager or subcontractor, where applicable, agrees to comply with any regulations promulgated by the State Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.
- v. The Manager or subcontractor, where applicable, agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the State Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action officer pursuant to N.J.A.C. 17:27 5.2 promulgated by the State Treasurer pursuant to P.L. 1975, C127, as amended and supplemented from time to time.
- vi. The Manager or subcontractor, where applicable, agrees to inform in writing all appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- vii. The Manager or subcontractor, where applicable, agrees to revise any of its testing procedures, if necessary to assure all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable federal laws and applicable federal court decisions.
- viii. The Manager or subcontractor, where applicable, agrees to revise all procedures relating to transfer, upgrading, downgrading, and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable federal law and applicable federal court decisions.
- ix. The Manager and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be request by the office from time to time in order to carry out the purposes of these

regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:25).

- x. Clauses iv., v., vi., vii., and viii., above, are not required for contractors with four (4) or fewer employees or a Manager or subcontractor who has presented evidence of a Federally approved or sanctioned Affirmative Action Program.

## **10. Non Collusion**

Both parties agree that no fee, commission, compensation, gift or gratuity was paid or received in regard to the solicitation of the Management Agreement, in contravention of N.J.S.A. 52:13D-13 et seq.

In addition, the Manager and its subcontractor(s) agree to be bound by the provisions of paragraph 3(a) through 3(f) of Executive Order No. 189 (Kean)(1988), set forth below, which prohibits conflicts of interest on the part of vendors providing services to State agencies:

Prohibitions on Manager activities, the violation of which shall render Manager liable to debarment in the public interest, pursuant to the procedures established by Executive Order No. 34 (Byrne)(1976), by any Executive department or agency, are as follows:

- a. The Manager shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, fee, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b, and c., in the Department of Treasury or any other agency with which such Manager transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from the Manager shall be reported in writing forthwith by the Manager to the Attorney General and the State Ethics Commission.
- c. The Manager may not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other management agreement, express or implied, or sell any interest in such Manager to, any State officer or employee or special State

officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g.

- d. Any relationships subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- e. The Manager shall not influence, or attempt to influence, or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- f. The Manager shall not cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Manager or any other person.

Clauses a. through f., above, shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the State Ethics Commission may promulgate under paragraph 3g.

UH reserves the right to take any or all of the following actions upon the Manager's violation of any of the foregoing provisions:

- Termination of the Management Agreement.
- Disqualification of the Manager from any future contracts, bids or requests for bid.
- Any other action, at law or in equity.

## **11. Compliance Obligations.**

- a. The Manager must comply with all local, state, and federal laws, rules and regulations applicable to the Management Agreement and to the services performed hereunder.
- b. This contract is subject to the New Jersey Contractual Liability Act N.J.S.A. 59:13-1, et seq. and the New Jersey Tort Claims Act N.J.S.A. 59: 1-1, et seq.



- c. The Manager certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. §1320a-7b(b) (“Anti-Kickback Statute”), or the federal “Stark Law,” set forth at 42 U.S.C. § 1395nn (“Stark Law”), with respect to the performance of its obligations under the Management Agreement.

The Manager has received a copy of UMDNJ’s Code of Conduct and UMDNJ’s Stark Law and Anti-Kickback Statute Policies and Procedures. UMDNJ’s Code of Conduct is available at <http://www.umdny.edu/complweb/code/conduct.pdf>. UMDNJ’s Stark Law and Anti-Kickback Statute Policies and Procedures are available at the following web addresses:

[http://www.umdny.edu/oppmweb/university\\_policies/ethics\\_compliance/PDF/00-01-15-6005.pdf](http://www.umdny.edu/oppmweb/university_policies/ethics_compliance/PDF/00-01-15-6005.pdf);

<http://www.umdny.edu/oppmweb/universitypolicies/ethicscompliance/PDF/00-01-15-6010.pdf>;

[http://www.umdny.edu/oppmweb/university\\_policies/ethics\\_compliance/PDF/00-01-15-6015.pdf](http://www.umdny.edu/oppmweb/university_policies/ethics_compliance/PDF/00-01-15-6015.pdf).

The Manager shall ensure that all individuals providing service under the Management Agreement who meet the definition of “Covered Persons: (as such term is defined in the “Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and the University of Medicine and Dentistry of New Jersey,” available at <http://www.umdny.edu/presweb/president/UMDNJ-CIA.pdf>), shall comply with UMDNJ’s Compliance Program, including the training related to the Anti-Kickback Statute and the Stark Law.

- d. The Manager shall be qualified to do business in the State of New Jersey, either by being incorporated in the State of New Jersey or by registering (as a corporation duly formed and in good standing in a state other than New Jersey) to do business in the State of New Jersey.
- e. The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of the Management Agreement except those contracts which are not within the contemplation of the Act. The Manager guarantees that neither it, nor any of its subcontractors, has been suspended or debarred by the Commissioner, Department of Labor, for violation of the provisions of the Prevailing Wage Act.
- f. All contractors are required to submit an Ownership Disclosure Form. Refer to N.J.S.A. 52:25- 24.2.

## **12. Exclusion Lists**

The Manager represents and warrants that it is not named on any exclusion list of the Office of the Inspector General, or any other exclusion list of any federal or New Jersey State agency or program. Manager represents and warrants that it is not in violation of any rule or regulation of any federal or New Jersey State agency or program which would preclude Manager from performing services or providing goods under the Management Agreement. During the term of the Management Agreement, Manager agrees to immediately notify UH in the event that Manager either:

- a. Has been placed on any such list;
- b. Has received notification that it may be placed on such list; or
- c. May be in violation of any federal or New Jersey State rule or regulation, which would preclude it from performing services or providing goods under the Management Agreement.

### **13. Certification of Non-Involvement in Prohibited Activities in Iran**

Pursuant to N.J.S.A. 52:32-58, Manager must certify that neither Manager, nor any of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If Manager is unable to so certify, Manager shall provide a detailed and precise description of such activities. The form is available at:

<http://www.state.nj.us/treasury/purchase/forms/StandardRFPForms.pdf>

### **14. Indemnification**

The Manager shall defend, indemnify, protect and save harmless UH and UMDNJ and their directors, officers, agents, servants and employees from and against any and all suits, claims, demands, awards, losses or damages of whatsoever kind or nature arising out of any negligent act, error or omission of Manager, its agents, servants, employees, subcontractors and retainees, in the performance of the Services under the Management Agreement, including, but not limited to, reasonable expenditures for, and costs of, investigation, hiring of expert witnesses, court costs, counsel fees, settlements, judgments, or awards.

The Manager agrees and understands that the Attorney General of the State of New Jersey represents UH in medical malpractice or other actions and will participate in any action involving UH which relates to the subject matter of the claim indemnified by Manager under this paragraph and nothing contained herein shall be construed to prevent such participation; and provided further that the Attorney General of New Jersey shall retain sole control, at Manager's sole expense, of the defense of any such claim and negotiations for its settlement or compromise to the extent that the Attorney General solely and exclusively determines that such claim implicates the

public policy of the State of New Jersey including, without limitation, the constitutionality, the validity of statutory administrative or decisional law, the appropriateness of State action, or the propriety of the conduct of State officers, employees, or agents.

## **15. Limitation of Liability**

There shall be no limits on the liability of the Manager for its responsibilities under the Management Agreement. Manager shall be liable for all damages, including direct, indirect, general, consequential, special and incidental, arising out of the Management Agreement.

## **16. Insurance**

Manager shall assume all responsibility for its actions and those of its directors, officers, employees, agents, servants and subcontractors while engaged in any activity connected with the Management Agreement. Manager shall procure and maintain at Manager's sole expense, sufficient insurance to protect the Manager and UH from any loss, damage, expense, property damage or bodily injury claims arising out of the performance of the Management Agreement. Manager must procure insurance from insurance companies licensed to do business in the State of New Jersey. Evidence of current insurance coverage shall be provided in the form of a Certificate of Insurance, which shall be submitted to UMDNJ / UH before commencement of the Services. Except for Worker's Compensation, UH, UMDNJ and the State of New Jersey shall each be named as an additional insured. All insurance shall provide for thirty (30) days' notice in writing to UH prior to cancellation, expiration, or non-renewal of the insurance coverage.

At a minimum, Manager shall carry the following insurance:

- **Commercial General Liability Insurance** - including contractual liability endorsement, subject to primary limits of coverage of not less than \$1,000,000 per occurrence/\$3,000,000 annual aggregate;
- **Automobile Liability Insurance** – covering owned, non-owned and hired vehicles with not less than \$1,000,000 for bodily injury and property damage;
- **Excess Liability Insurance** - subject to an additional limit of liability of not less than \$3,000,000 per occurrence/\$10,000,000 aggregate excess of the primary policy;
- **Workers' Compensation Insurance** - statutory coverage and including employers liability coverage of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate;
- **Additional Insured** – UH, UMDNJ and the State of New Jersey to each be

named as additional insured ATIMA with respect to Commercial General, Automobile and Excess Liability Insurance carried by Manager pursuant to the Management Agreement;

- **Errors and Omissions Liability insurance** - with limits of \$1million/\$1million; UH, UMDNJ and the State of New Jersey to each be named as additional insured ATIMA with respect to Services provided by contractor pursuant to the Management Agreement. If applicable, this insurance may be required.
- **Professional Liability Insurance** – with limits not less than **\$5 million**.

All insurers affording coverage are to be licensed to conduct the business of insurance within the State of New Jersey and to be rated not less than A- by Bests Insurance Rating Service.

UH and UMDNJ will be named as certificate holder with respect to all aforementioned insurance coverages.

All Insurance coverage shall remain in effect throughout the course of the Management Agreement. The Manager shall be responsible for any and all future claims, litigation, damages, liabilities, whatsoever, which may arise as a result of the Manager's performance of the Services pursuant to the Management Agreement.

No contract will be issued until such time as the Manager has supplied UMDNJ / UH with Certificates of Insurance verifying the above-indicated coverage.

## **17. Audit Rights**

UH reserves the right to audit or cause to be audited the Manager's books and accounts pertaining to UH at any time during the term of the Management Agreement and for five (5) years thereafter. If any unsubstantiated payment or overpayment is discovered as a result of any such audit, Manager agrees to repay UH for any such unsubstantiated payment or overpayment within thirty (30) calendar days of such notice or, if the Services are not yet complete, Manager hereby authorizes UH to reduce any payments due Manager by the amount of the unsubstantiated payment or overpayment.

The Manager shall maintain records for all services delivered under the Management Agreement for a period of five (5) years from the date of final payment. Such records shall be made available to UH upon request.

## **18. Governing Law**

The Management Agreement and the rights of the parties shall be construed and

governed by the Constitution and laws of the State of New Jersey, including the New Jersey Contractual Liability Act N.J.S.A. 59:13-1 et seq., if applicable, and the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq. and any cause of action shall have jurisdiction and venue only in the courts of the State of New Jersey, County of Essex.

**19. Third-Party Beneficiaries**

Nothing in the Management Agreement shall be construed to give any rights or benefits under the Management Agreement to anyone other than UMDNJ, UH or the Manager.

**20. Entire Management Agreement**

The parties agree that they are not relying upon any promises, understanding, warranties, circumstances, conduct, negotiations, expectations, representations or other agreements, oral or written, express or implied, other than those expressly set forth herein; that the Management Agreement is a complete integration and constitutes the entire Management Agreement of the parties with respect to the subject matter hereof; that no amendments or other modifications of the Management Agreement shall be valid unless in writing and signed by an authorized officer of each party hereto; that this entire Management Agreement has been bargained for and negotiated; and the parties have read, understood and approved the Management Agreement in its entirety.

**21. Notice**

Any notice to be given pursuant to the Management Agreement shall be delivered personally or sent certified mail, return receipt requested to the following addresses:

If to Manager:

**[TO BE INSERTED]**

If to UH:

**[TO BE INSERTED]**

With copies to DOH:

**[TO BE INSERTED]**

Such Notice will be deemed effective:

- a. If delivered personally, on the date of delivery thereof; or
- b. If delivered by Certified Mail, on the date of the receipt.

**22. Interpretation**

The titles to paragraphs of the Management Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the terms of the Management Agreement.

**23. Successors and Assigns**

Manager and UMDNJ / UH bind themselves, their partners, successors, assigns and legal representatives to the other party to the Management Agreement and the partners, successors, assigns and legal representatives of such other party with respect to all covenants to the Management Agreement, except as limited by Section 31 below.

**24. Publicity**

Publicity and/or public announcements pertaining to the Management Agreement shall be approved by UMDNJ / UH in writing prior to release.

**25. Severability**

If any provision in the Management Agreement is held invalid, void, or unenforceable by a court of competent jurisdiction or by operation of any applicable law, and if it shall not reasonably appear to have been so material that without it the Management Agreement would not have been made by the parties, the remaining clauses or provisions shall nevertheless continue in full force and effect, without being impaired or invalidated.

**26. Provisions of Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in the Management Agreement shall be deemed to be inserted herein and the Management Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon notice by either party, the Management Agreement shall forthwith be physically amended to make such insertion.

**27. Set-Off for State Tax Indebtedness**

Pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction project to the State of New Jersey or its agencies or instrumentalities, including the legislative and

judicial branches of State government, is entitled to payment for those goods or services or construction projects at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set-off so much of that payment as shall be necessary to satisfy the indebtedness. The amount of the set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness. Interest that may be payable by the State pursuant to P.L. 1987, c. 184 (N.J.S.A. 52:32-32 et seq.) to the taxpayer shall be stayed.

**28. Claims Asserted by Manager**

All claims asserted against UMDNJ / UH by Manager shall be subject to appropriations, the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1, et seq.) and the New Jersey Tort Claims Act (N.J.S.A. 59:1-1, et seq.). All claims asserted by Manager against UH shall be subject to the filing and other requirements (including the required timeframe for the filing of a claim) of the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1, et seq.)

**29. Amendment**

Except as otherwise provided in the Management Agreement, neither the Management Agreement nor any term hereof may be changed, modified, or terminated except to the extent that the same is affected and evidenced by the written Management Agreement of the parties.

**30. No State Responsibility**

UH shall not pay any subcontractor of the Manager any amount due under its respective subcontracts, including amounts arising out of indemnity claims for which Manager is responsible. No subcontractor shall have any contractual relationship with UH or right against UH for labor, services, materials or equipment furnished to UH by such subcontractor, unless its subcontract has been expressly assigned to UH. Manager acknowledges that its indemnity obligations to its subcontractors shall include all claims for payment or damages by any subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Services, except to the extent its subcontract has been assigned to UH as contemplated hereunder.

**31. No Assignment**

The Management Agreement may not be assigned by the Manager without UMDNJ'S / UH's prior written consent, which may be given or withheld in its sole discretion. Any attempted assignment without such consent shall be cause for immediate termination of the Management Agreement by UMDNJ / UH. The Management Agreement shall bind and inure to the benefits of UH's respective successors and permitted assigns. No assignment shall relieve a party of any obligation under the Management Agreement.

## **32. Miscellaneous**

- a. These Terms and Conditions shall serve as a baseline/minimum for the terms and conditions of the Management Agreement. The Management Agreement shall contain terms and conditions that are substantially similar to these Terms and Conditions and no variations from these Terms and Conditions shall be considered if the impact of such variation has an adverse impact on UH. In any event, if there is a conflict between these Terms and Conditions and the Management Agreement, the terms and conditions contained in the Management Agreement shall control.
- b. Any references in the Management Agreement to a specific number of days shall include weekends and holidays.
- c. The failure of either party to insist on strict performance of any of the provisions of the Management Agreement shall not be construed as a waiver of any other default whether or not of the same or similar nature.



## **Business Associate Agreement**

This Business Associate Agreement (“BAA”) is entered into between The University of Medicine and Dentistry of New Jersey – Human Resource Department (“**UMDNJ**”), a body corporate and politic of the State of New Jersey having its principal administrative offices at 65 Bergen Street, Newark, New Jersey 07107 (hereinafter referred to as “**Covered Entity**”) and

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[**Name and Address of Contracting Party**] (hereinafter referred to as “**Business Associate**”) (the “**Covered Entity**” and “**Business Associate**” hereinafter collectively referred to as the “**Parties**”). Any conflict between the terms of this BAA and the Underlying Agreement between the Parties shall be governed by the terms of this BAA.

WHEREAS, in connection with the Underlying Agreement the Business Associate provides services to Covered Entity and Covered Entity discloses to Business Associate certain Protected Health Information that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009) (the “**HITECH Act**”), and regulations promulgated by the U.S. Department of Health and Human Services (the “**HHS**”) (hereinafter the “**HIPAA Regulations**” and the “**HITECH Regulations**,” respectively) and/or applicable state and/or local laws and regulations; and

WHEREAS, for good and lawful consideration and with acknowledgment of the mutual promises, set forth in the Underlying Agreement and herein, the Parties, intending to be legally bound, hereby agree as follows:

### **I. Definitions**<sup>1</sup>

A. **Breach** means the unauthorized acquisition, access, use, or disclosure of protected health information (“**PHI**”) which compromises the security or privacy of such information in violation of HIPAA, the HITECH Act, the HIPAA Regulations, and/or the HITECH Regulations, except where a good faith belief exists that unauthorized persons to whom such information is disclosed would not reasonably have been able to retain such information. The term “**Breach**” does not include:

1. Any unintentional acquisition, access, or use of PHI by an employee or person acting under the authority of a Covered Entity or Business Associate if:

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<sup>1</sup> An expanded definition of the following terms as well as the definition of other relevant terms are available on UMDNJ’s website at <http://www.umdj.edu/purchweb/vendors/index.htm> . Terms used in this Business Associate Agreement but not otherwise defined shall have the meaning ascribed to those terms in HIPAA, the HITECH Act, and any current and future regulations promulgated under HIPAA and/or the HITECH Act. See 45 C.F.R. 160.103, 164.402 and 164.501.

a. Such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or person, respectively, with the Covered Entity or Business Associate; and

b. Does not result in further unauthorized use or disclosure; or

2. Any inadvertent disclosure by a person who is otherwise authorized to access PHI at a Covered Entity or Business Associate to another, similarly authorized person at the same Covered Entity, Business Associate or organized health care arrangement in which the Covered Entity participates and such information received as a result of such disclosure is not further used or disclosed in an impermissible manner.

**B. Business Associate** means a service provider that receives PHI from, or creates or maintains PHI on behalf of, a Covered Entity including, but not limited to, claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefits management, practice management, reprising, transcription, legal, actuarial, accounting, consulting, data aggregation, administrative, accreditation or financial services, and vendors that offer personal health records to patients as part of a Covered Entity's electronic health record, where the service or function involves the use or disclosure of individually identifiable health information from the Covered Entity or from another Business Associate of the Covered Entity. A Business Associate excludes, among others, employees of Covered Entities.

**C. Covered Entities** include (i) health care providers that transmit patient health information electronically in connection with a covered transaction, (ii) health plans (including employer-sponsored employee welfare benefit plans and self-insured employer-offered health plans), and (iii) health care clearinghouses.

**D. Data Aggregation** means, with respect to PHI created or received by a Business Associate, the combining of PHI received by a Business Associate in its capacity as a Business Associate for more than one Covered Entity to permit data analyses that relate to the health care operations of the respective Covered Entities.

**E. Designated Record Set** means any grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a Covered Entity that is (i) medical records and billing records about individuals, and/or (ii) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, used, in whole or in part, by or for the Covered Entity, to make decisions about individuals.

F. **Electronic Protected Health Information (“Electronic PHI”)** means PHI that is transmitted by or maintained in electronic media.

G. **Individual** means the person who is the subject of PHI and includes a person who qualifies as a personal representative (45 C.F.R. 164.502(g)).

H. **Protected Health Information (“PHI”)** means physical and/or mental health and demographic information collected from an individual and created or received by a Covered Entity and/or Business Associate that identifies or could reasonably identify an individual (*i.e.*, is “individually identifiable”) and is held or transmitted in any form including electronic media. PHI excludes educational records and employment records held by a Covered Entity as an employer (45 C.F.R. 164.501).

I. **Required By Law** means that Covered Entities may use and disclose PHI without individual authorization as required by law (including by statute, regulation, or court orders) in accordance with the requirements in 45 C.F.R. 164.512(c), (e) or (f).

J. **Unsecured PHI** means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary of HHS.

## II. **Permitted Uses and Disclosures of PHI by Business Associate**

A. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such uses and/or further disclosures (i) do not violate the requirements of HIPAA’s Business Associate contract standard at 45 C.F.R. 164.504(e)(1) and/or the HITECH Act, if done by the Covered Entity, (ii) are the minimum necessary PHI to accomplish the intended purpose, or (iii) are Required By Law.

B. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate, provided, however, that any such uses or disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that (i) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (ii) the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

C. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services to Covered Entity (42 C.F.R. 164.504(e)(2)(i)(B)).

D. Business Associate may use PHI to report violations of law to appropriate federal and state authorities as permitted under HIPAA and/or other federal and state laws. (45 C.F.R. 164.502(j) (1)).

### **III. Duties and Obligations of Business Associate Related to PHI**

A. Business Associate shall not use or disclose PHI other than as permitted or required by the Underlying Agreement, this BAA, and/or as Required By Law. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI in violation of this BAA.

B. Business Associate shall use and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI and/or Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

C. Business Associate shall notify, in writing, the Covered Entity when the Business Associate discovers a Breach of Unsecured PHI. A Breach is deemed to have been discovered by a Business Associate as of the first day on which Business Associate (by its employee, officer, or other agent) knows or would have known of such Breach by exercising reasonable diligence. Business Associate's notification to Covered Entity (i.e., UMDNJ) shall:

1. Be made to the Covered Entity without unreasonable delay and in no event later than ten (10) days following the discovery of a breach, except in the case of a Business Associate that is an agent of the Covered Entity, in which case the Business Associate must provide the Covered Entity with immediate notification of the breach, except where law enforcement officials determine that a notification would impede a criminal investigation or cause damage to national security. Unless the language in the underlying agreement between the parties indicates that a Business Associate is an independent contractor, then the Business Associate shall be considered an agent of UMDNJ for purposes of breach notification.

2. To the extent possible, provide the identity of each Individual whose Unsecured PHI was, or is reasonably believed to have been, Breached, and any other information that the Covered Entity is required to include in the notice to affected Individuals under 45 C.F.R. 164.404(c), either at the time of notice of Breach to the Covered Entity or as promptly thereafter as information becomes available. Include information in substantially the same form as the "Notification To the Covered Entity About A Breach of Unsecured Protected Health Information" available to Business Associates at UMDNJ's website at [http://www.umdj.edu/hipaaweb/BN/NOTICATION\\_TO\\_THE\\_COVERED\\_ENTITY.pdf](http://www.umdj.edu/hipaaweb/BN/NOTICATION_TO_THE_COVERED_ENTITY.pdf).

D. Business Associate is subject to the same legal requirements to cure, terminate or report violations to the Secretary of HHS under the same duty and in the same manner as Covered Entity.

E. Business Associate shall mitigate, to the extent practicable, any harmful effect known to it resulting from an unauthorized use or disclosure of PHI or Breach of Unsecured PHI.

F. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI (i) received from, or (ii) created or received by Business Associate on behalf of, a Covered Entity agrees, in writing, to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI.

G. Business Associate (i) shall provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI and, (ii) to the extent applicable, shall provide access for inspection and copying of PHI in a Designated Record Set at reasonable times at the request of Covered Entity or, as directed by Covered Entity, to an Individual (45 C.F.R. 164.524). If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act. (42 U.S.C. §17935(e)).

H. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.

I. Business Associate agrees to use, disclose and request (i) only the minimum necessary PHI, as defined by law, and (ii) to the extent practicable, only the limited data set of PHI excluding direct identifiers, as defined in 45 C.F.R. 164.514(e)(2).

J. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI (45 C.F.R. 164.528). Should a Covered Entity or an Individual request an accounting of disclosures of PHI pursuant to 45 C.F.R. 164.528, Business Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond no later than sixty (60) days after receipt of such request, subject to specific statutory exceptions.

K. Business Associate shall make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to Covered Entity at the request of Covered Entity, or the Secretary of HHS, for purposes of the Secretary determining Covered Entity's compliance with HIPAA and/or the HITECH Act in the time, manner and place designated by the Covered Entity and/or the Secretary.

L. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to, no later than sixty (60) days after receipt of such request from a Covered Entity or Individual.

M. Business Associate agrees to abide by the limitations on marketing communications to Individuals regarding the purchase and use of products or services set forth in the HITECH Act and the HITECH Regulations.

N. Business Associate agrees and acknowledges that the administrative rules governing, and the civil and criminal penalties for violating, HIPAA, the HITECH Act, the HIPAA Regulations and the HITECH Regulations, apply to it in the same manner as they apply to Covered Entity, as more fully set forth at UMDNJ's website at <http://www.umdnj.edu/complweb/policies/index.htm>.

#### IV. **Term and Termination**

A. **Term.** The term of this BAA shall be effective as of the effective date of the Underlying Agreement and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section IV.

B. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

1. Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this BAA and the Underlying Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
2. Immediately terminate this BAA and/or the Underlying Agreement if Business Associate has breached a material term of this BAA and cure is not possible; or
3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of HHS.

#### C. **Effect of Termination.**

1. (a) Except as provided in paragraph C.2 of this Section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.

(b) Except as provided in paragraph C.2 of this Section, if Covered Entity, in its sole discretion, requires that Business Associate destroy any or all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, either due to the termination of this BAA or otherwise, Business Associate shall certify, in writing, to Covered Entity that the PHI has been destroyed and rendered indecipherable, pursuant to HIPAA and the HITECH Act. This provision also shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible within thirty (30) calendar days of such request. In such case, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. This provision also shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

3. Should the Business Associate make a disclosure of PHI in violation of this BAA, Covered Entity shall have the right to immediately terminate any contract, other than this BAA, then in force between the Parties, including the Underlying Agreement.

4. The provisions of this Section IV.C, shall survive the termination of this BAA and the Underlying Agreement for any reason.

#### **V. Remedies In Event of Breach**

A. Business Associate agrees and acknowledges that irreparable harm will result to Covered Entity, and to its business, in the event of breach by Business Associate of any covenants, duties, obligations and assurances in this BAA and further agrees that remedy at law for any such breach shall be inadequate and that damages resulting there from are not susceptible to being measured in monetary terms. In the event of any such breach or threatened breach by Business Associate, Covered Entity shall be entitled to (i) immediately enjoin and restrain Business Associate from any continuing violations and (ii) reimbursement for reasonable attorneys' fees, costs and expenses incurred as a proximate result of the breach. The remedies in this Section V shall be in addition to any action for damages and/or other remedy available to Covered Entity for such breach.

B. Business Associate shall indemnify and hold Covered Entity, its directors, officers, employees and agents harmless from any and all liabilities, damages, reasonable attorneys' fees, costs and expenses incurred by Covered Entity as a result of a breach of this BAA caused by Business Associate's actions or inactions and/or those of its employees and agents.

C. Business Associate agrees and acknowledges that the provisions of this BAA shall be strictly construed.

#### **VI. Miscellaneous**

A. **Independent Contractor.** None of the provisions of this BAA and/or the Underlying Agreement are intended to create nor shall be deemed or construed to have created any relationship between the Parties other than that of independent entities contracting with each other unless otherwise explicitly stated in this BAA or the Underlying Agreement.

**B. Detrimental Reliance By Covered Entity.** Business Associate agrees and acknowledges that its covenants, duties, obligations and assurances herein shall be detrimentally relied upon by Covered Entity in choosing to commence or continue a business relationship with Business Associate. Covered Entity shall not be liable to Business Associate for any claim, loss, or damage relating to Business Associate's use or disclosure of any information received from Covered Entity or from any other source.

**C. Regulatory References.** Any reference herein to law means the law as in effect or as amended.

**D. Construction.** The BAA shall be construed broadly and any ambiguity shall be resolved in favor of a meaning that complies and is consistent with applicable law.

**E. Severability.** In the event that any provision of this BAA violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this BAA, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this BAA.

**F. Authority.** The signatories below have the right and authority to execute this BAA for their respective entities and no further approvals are necessary to create a binding agreement.

**G. Covered Entity's Notices To Business Associate.** Covered Entity's Notices to Business Associate are available on UMDNJ's website at [http://www.umdj.edu/hipaaweb/privacy/privacy\\_NPPUMDNJ03.htm](http://www.umdj.edu/hipaaweb/privacy/privacy_NPPUMDNJ03.htm). Such Notices include, but are not limited to, (i) any limitations in the Covered Entity's Notices of Privacy Practices that may affect the Business Associate, (ii) any changes in, or revocation of, permission by an Individual to use or disclose PHI, or (iii) any restriction in the use or disclosure of PHI that Covered Entity has agreed to.

**H. Compliance With State Law.** Business Associate agrees and acknowledges that as the holder of individually identifiable health information it is subject to New Jersey law. In the event of any conflict between federal health care laws and New Jersey law, the Business Associate shall comply with the more restrictive provision.

**I. Conflict Among Contracts.** Should there be conflict between the terms of this BAA and any other contract between the Parties (either previous or subsequent to the date of this BAA), the terms of this BAA shall control unless the Parties, in a subsequent writing, specifically otherwise provide.

**J. Modification.** This BAA may only be modified by a writing signed by the Parties. The Parties agree to take such action subsequent to this BAA as necessary to amend the BAA from time to time as necessary for the Parties to comply with the requirements of any applicable law.



**K. Notices to Parties.** Any notice required under this BAA to be given shall be made in writing to:

**To The Covered Entity:**

School/Unit/Department:

Address:

Telephone:

E-Mail:

**To The Business Associate:**

Name/Title:\_\_\_\_\_

Address:

Telephone:

E-Mail:

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement the day and year first written below.

By: UNIVERSITY OF MEDICINE  
AND DENTISTRY OF NEW JERSEY  
[COVERED ENTITY]

By: [BUSINESS ASSOCIATE]

Approved: \_\_\_\_\_

Approved: \_\_\_\_\_

Title: Denise Mulkern

Title:

\_\_\_\_\_  
Senior Vice President for Finance

Date: \_\_\_\_\_

Date: \_\_\_\_\_

